

**OFFICE OF THE HEARING EXAMINER
CITY OF RENTON**

Minutes

APPLICANT/OWNER: Segale Properties LLC
P.O. Box 88028
Tukwila, WA 98138

CONTACT: Jami Balint
Segale Properties LLC
P.O. Box 88028
Tukwila, WA 98138

PROJECT NAME: Upper Balch Pit Grade & fill
File No.: LUA 10-056, ECF, SP

LOCATION: 301 Monroe Ave NE

SUMMARY OF REQUEST: Applicant requested a special grad and Fill permit for one million cubic yards of fill that would be imported into an existing sand/gravel pit.

SUMMARY OF ACTION: Development Services Recommendation: Approve

DEVELOPMENT SERVICES REPORT: The Development Services Report was received by the Examiner on October 5, 2010.

PUBLIC HEARING: After reviewing the Development Services Report, examining available information on file with the application, field checking the property and surrounding area; the Examiner conducted a public hearing on the subject as follows:

MINUTES

*The following minutes are a summary of the October 12, 2010 hearing.
The legal record is recorded on CD.*

The hearing opened on Tuesday, October 12, 2010, at 9:00 a.m. in the Council Chambers on the seventh floor of the Renton City Hall. Parties wishing to testify were affirmed by the Examiner.

The following exhibits were entered into the record:

<u>Exhibit No. 1:</u> Project file containing the original application, reports, staff comments and other documentation pertinent to this request.	<u>Exhibit No. 2:</u> Neighborhood Detail Map
<u>Exhibit No. 3:</u> Existing Conditions	<u>Exhibit No. 4:</u> Cross Sections
<u>Exhibit No. 5:</u> Existing Trees	<u>Exhibit No. 6:</u> Change of Condition 2 and 9 to the Staff Report

Exhibit No. 7: Agreement Between King County and Segale For Road Maintenance of Jefferson Avenue NE	
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The hearing opened with a presentation of the staff report by Vanessa Dolbee Senior Planner, Community and Economic Development, City of Renton, 1055 S Grady Way, Renton, Washington 98057. The Special Permit is to allow the continued filling and reclamation operation of the Upper Balch Pit. Approximately one million cubic yards of fill would be imported into the existing sand and gravel pit.

The site is located at 301 Monroe Avenue NE, it is approximately 14.4 acres in size and currently zoned R-10. It was a permitted sand and gravel pit from 1962 – 1982 and has been a reclamation site since 1982. Previous land fill permits have been approved for this site, the most recent being LUA -00-064 which expired on July 31, 2010. There are no plans to develop the site and the applicant has proposed to fill to an elevation of 325 feet Mean Sea Level which is approximately 5-15 feet below the grade of the surrounding streets and land area. The only existing improvements on the site would be an asphalt road used to bring fill into the site. The road would be removed as the site fills, the road will not remain on the site. The applicant has requested that this permit be for a 10-year time frame.

ERC issued a Determination of Non-Significance, no appeals were filed.

When reviewing a Special Grade and Fill permit, the Hearing Examiner would make a determination that the activity would not be unreasonably detrimental to the surrounding area and would consider the following criteria:

1. Size and Location of the Activity, the site is surrounded in the north by smaller parcels of commercial zoned properties, on the east is the Greenwood Cemetery, on the south and west is a light industrial zone.
2. Traffic Volumes and Patterns, the million cubic yards requested fill would fill the site up to the 325 foot elevation, which would result in approximately 200,000 vehicle trips. The haul route would be along NE 3rd which turns into NE 4th at the top of the hill, right onto Jefferson Avenue, the current asphalt access is off of Jefferson Avenue. They might use NE 4th and Monroe Avenue which is located on the east side of the site. The applicants have also requested some extended haul hours, Saturday between 8:30 am and 3:30 pm and nighttime, 10:00 pm to 7:00 am. The night hauls could have impacts on the surrounding neighborhoods.
3. Screening, Landscaping, Fencing and Setbacks, currently surrounding the site is an 8-foot chain link fence that has wooden slats that provides screening. There are no slats on the south side of the property, the fence appears to be in fair condition and would need to be repaired to an acceptable condition. There are a number of locations on the site where the grade falls quite steeply, the fence does help with pedestrian safety, however all the gates should be locked at the end of each workday and on weekends when the site is not in use. The applicant has requested to remove all trees on site, 566 trees. The trees do provide screening for the pit and should not be removed until the time it is necessary to be removed due to the filling.
4. Unsightliness, Noise, Dust, most of the construction activity would be occurring in the bottom of the pit, surrounding area impacts would be minimal until the elevation grade comes up closer to the street. There have been no complaints from the surrounding areas for noise and dust. Dirt could be tracked to the street of the City Systems, a street cleaning bond should be required and a wheel washing facility if needed.
5. Surface Water, currently water percolates through the ground and the gravel at the bottom of the site, no surface water leaves the site and that would continue when the fill has been completed. The site is located in Aquifer Protection Zone 2, the quality of fill material is restricted by code. The current

asphalt road is considered not allowed material for fill in the Aquifer Protection Zone, the road must be removed from the site.

6. Reuse of the Site, there is no development plan however, a reclamation plan should be submitted when the elevation of 325 feet is met.

The applicant requested a modification to regrade the steep slopes that were created during the original excavation of this pit. Staff did review the criteria and does recommend the approval of this modification.

Jami Balint, PO Box 88028, Tukwila 98138 stated that she is the in-house counsel for the applicant. She concurred with everything stated by Ms. Dolbee. The applicant concurred with 7 of the 9 conditions, Ms. Dolbee stated that she had modified two conditions and those modifications are consistent with the request made by the applicant. They would like to request that the City's authority to impose additional conditions or to limit any aspects of the operation be limited to those conditions that are reasonably necessary to respond to new impacts associated with the operation or to respond to significant risks to public health, safety and welfare.

This project has been ongoing to approximately 28 years and in those years there have been no complaints regarding noise, traffic or any other impacts. Dust can be bad, water and reduced speed would be used to reduce impacts of any dust.

In response to the Examiner's question regarding renewal of the permit Ms. Balint stated that there were staff turnovers at Segale's, she took on this project in July which gave her only 30 days to get the applicant in. It was done as soon as possible. The asphalt access road would be removed incrementally as the fill is brought in. The asphalt would be hauled off the site. The easement with the City that has currently expired has been presented to the Mayor for signature. The City would be allowed to use the site as a stormwater overflow site for a term of 5 years. This will be temporary until a permanent solution for the stormwater can be found. As the fill continues, the City would need to cut their pipe to keep up with the fill process.

The Examiner stated that ultimately the site would be redeveloped with something compatible with the zoning. As the site is filled that fill would be compacted appropriately.

Ms. Balint stated that was correct. The plan is that until 325 feet the material itself is sufficient for compaction purposes. Compaction through some mechanical device is required, once the final Special Grade and Fill Permit is completed, for any fill that occurs beyond the 325 foot elevation.

Robert Fritz, Supervising Ecologist, King County Department of Transportation, 155 Monroe Avenue NE, Renton 98056 stated that Jefferson Avenue NE is a private road and a special use permit would be needed to use that road for truck traffic. The City of Renton and King County Emergency Shops are located in this area, they operate whenever an emergency happens, there is some concern about truck traffic and especially with the change in hours. Their operation runs 24 hours per day. King County can access their site via both Jefferson and Monroe.

The Examiner asked if there had been prior problems with the hauling routes.

Mr. Fritz stated that he was not aware of any prior conflicts or problems with the hauling up to this time.

Kayren Kittrick, CED pointed out a property line on the map designating that Jefferson Avenue is a private road, not sure about a Special Use Permit that would be between King County and Segale. Jefferson Avenue has been used by the public for several years. Segale should check with King County regarding actual road access in that area. Monroe Avenue is the primary access for the majority of the King County and City of Renton Shops in that area.

There is one complaint on the board, through Code Compliance, someone thought that the type of fill being dumped on the site was inappropriate. It was proved unfounded.

This site has been under agreement with the City of Renton, they have the ability to use the site for overflow. The water gathers in there and seeps into the ground. This entire pit functions as a filter. Behind the City of Renton shops there is a filter station as well. The gravel and sand that this area is based on is a natural filter to the Aquifer. The stormwater group is very grateful that they are going to be able to continue for at least 5 years, which gives them time to design the system that they are going to need and where they are going to route it.

The Examiner asked about the hauling on Saturday.

Ms. Kittrick stated that it was not a problem. If there were complaints about the evening hours, they would be shut down immediately. There are no close residences that would be disturbed by traffic at that time of night. If they were using Monroe, it could conflict with a funeral, but that is true of any day of the week at the cemetery. There have been no complaints from the cemetery or RTC. Jefferson and Monroe were built for heavy equipment because the transfer station, maintenance equipment and the big trucks that the City runs, the roads were built for that purpose.

Ms. Balint stated regarding the need for a Special Use Permit, on April 12, 1993 the applicant did sign a written agreement with King County regarding road maintenance for Jefferson Avenue NE. The applicant does not see any need for a Special Use Permit from King County because they have been using Jefferson Avenue as access for over 28 years. The agreement has not expired.

The **Examiner** called for further testimony regarding this project. There was no one else wishing to speak, and no further comments from staff. The hearing closed at 9:45 am.

FINDINGS, CONCLUSIONS & RECOMMENDATION

Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. The applicant, Jami Balint for Segale Properties LLC, filed a request for a Special Permit for Fill and Grade.
2. The yellow file containing the staff report, the State Environmental Policy Act (SEPA) documentation and other pertinent materials was entered into the record as Exhibit #1.
3. The Environmental Review Committee (ERC), the City's responsible official issued a Determination of Non-Significance (DNS).
4. The subject proposal was reviewed by all departments with an interest in the matter.
5. There was no opposition from the public regarding the subject proposal.
6. The subject site is located at 301 Monroe Avenue NE. The subject site is located just south and east of where NE 4th Street and NE 3rd Street intersect. Monroe Avenue NE runs along the eastern boundary of the subject site. A portion of Jefferson Avenue NE runs along the western boundary of the subject site but most of what appears to be Jefferson Avenue is actually a private roadway owned by King

County in conjunction with their shop site located west and south of the applicant's property.

9. The map element of the Comprehensive Plan designates the area in which the subject site is located as suitable for the development of Medium Density Residential uses, but does not mandate such development without consideration of other policies of the Plan.
10. The subject site is currently zoned Residential-10 (R-10).
11. The subject site was annexed to the City with the adoption of Ordinance 2249 enacted in June 1966.
11. The subject site is located in Aquifer Protection Zone 2.
12. A prior Special Permit for Fill and Grade was issued on July 31, 2000. That permit has expired.
13. The subject site is approximately 14.40 acres. The subject site is rectangular. The subject site takes up almost the entire block between NE 4th Street and NE 2nd on the north and south and Monroe and Jefferson on the east and west with the exception of the retail businesses located along NE 4th Street.
14. The subject site was a gravel quarry and has been excavated. The last special permit started the process of refilling the subject site for reclamation and redevelopment. The pit is approximately 40 to 60 feet deep. Activities are generally confined to the lower reaches of the pit as materials are dumped and settled at the bottom the work progresses upward. An asphalt road allows vehicles to enter the pit from Jefferson and drive downslope to the bottom. A traffic signal is located at the intersection of Jefferson and NE 3rd Street. The applicant has proposed possibly using Monroe Avenue NE for access but currently no access to the pit is located along that street.
15. The subject site is surrounded by an 8-foot tall chain link fence. The fence has been equipped with slats along the north, east and west sides with no slats on the south side. Staff reports that some portion of the slats are in disrepair and recommends that they be fixed as well as installing slats along the south side. In addition, staff noted that vegetation has been allowed to overgrow sections of the fence. Staff recommended that the vegetation be trimmed and maintained.
16. The applicant estimates that approximately 1,000,000 (one million) cubic yards of material will be needed to fill the quarry site. The estimate is that over a ten year permit, if used regularly, filling will require approximately 200,000 round trips or approximately 10,000 round trips per year. These numbers would depend on the need to dispose of fill material from other excavation projects.
17. The applicant proposes filling the existing pit to an elevation of 325 feet Mean Sea Level. Surrounding terrain is approximately 330 to 345 feet Mean Sea Level. The applicant proposes that the filling stop below surrounding terrain under the fill permit to allow final reclamation plans to be formulated. The permit would expire in ten (10) years whether the level was reached or not. A new permit would be required if the projected elevation of 325 feet were not reached in ten years.
18. Since the subject site is located in the Aquifer Protection Zone code requires any fill material to meet certain quality standards. The quality of fill material is restricted and will need to be appropriately certified to meet City Code. In addition, as the site is filled the asphalt road access will have to be removed as asphalt is considered demolition waste.
19. The prior permit limited hauling hours to weekdays between the hours of 8:30am and 3:30pm. The applicant has asked that work in the pit be permitted between 7:00am to 8:00pm. The applicants have

requested some extended haul hours, Saturday between 8:30 am and 3:30 pm and nighttime, 10:00 pm to 7:00 am. The night hauls could have impacts on the surrounding neighborhoods.

20. The excavations of the past created very steep slopes along the sides of the pit. The slopes range to 60 and 70 percent. The Geotechnical report indicated that those slopes were cut near the angle of repose and are generally stable. Those slopes would be defined as Protected Slopes under normal code definitions. The applicant has requested a modification permitting re-grading of protected slopes created during mineral extraction/recovery activities.
21. A Wetlands Reconnaissance Technical Memorandum found no wetland areas in the pit. Surface water pools in different areas of the pit based on surface conditions and storm drainage discharge which occurs as a result of City stormwater practices permitted by the applicant.
22. Over the course of excavation and refilling the pit, shrubs and trees have grown on the subject site. Approximately 600 Alder and Douglas Firs were inventoried. Section 4-4-130H.1.d exempts tree preservation when justified as part of mineral extraction. Staff noted a majority of the trees are below the surround elevations and that preservation would be impractical as the pit is filled. There is no way to refill the pit and protect trees at lower levels in the pit.

CONCLUSIONS:

Special Permit for Fill and Grade

1. A special permit to allow fill and grade is subject to the following criteria from Section 4-9-080:
 - a. Compatibility of Proposed Use: The proposed activity would not be unreasonably detrimental to the surrounding area. The Hearing Examiner shall consider, but is not limited to, the following:
 - i. Size and location of the activity.
 - ii. Traffic volume and patterns.
 - iii. Screening, landscaping, fencing and setbacks.
 - iv. Unsightliness, noise and dust.
 - v. Surface drainage.
 - vi. The length of time the application of an existing operation has to comply with non-safety provisions of this Title.
2. The 14 acre site has been active for 40 or 50 years. First, extraction was the major activity and then for the last 10 to 20 years refilling the site has occurred. Haul routes have been tailored to avoid interference with rush hour traffic in both the morning and evenings. The site is generally separated from residential uses by intervening land uses. The commercial uses to its north present their rear facades to the subject site. The current depth of 40 to 60 feet also serves to insulate neighboring uses from the filling operations. The proposed permit appears to reasonably allow reclamation and eventually reuse for more productive objectives.

3. Traffic haul routes that have been used would be used again. The access driveway would exit and enter along Jefferson and head north to the traffic light. There have been no specific incidents that require special review. The applicant has proposed possible access along Monroe. Until such access is actually proposed and reviewed, Jefferson should remain the route of choice. It appears that the applicant may need to negotiate with King County since the southerly extension of Jefferson may be a private King County road. The applicant shall be responsible for appropriate costs of cleaning and repair of roads which might be affected by the heavy loads over many years. The hours of hauling should always remain subject to the City's discretion as conditions in the area could change. The extension of hours into the weekend or at nights could affect residents in the nearby neighborhoods although none would be immediately affected. Staff concluded that Saturday hauling would not necessarily interfere with traffic and could serve to spread the trips over a longer week. Extending the hours to Sundays or nights should be reserved for special conditions and a blanket approval of such extended hours seems inappropriate.
4. The fence surrounding the site is in need of maintenance and repair including the replacement of missing or broken slats as well as vegetation management and control. In addition, the fence has no slats along its south margin and slats should be installed in those locations. The trees along the lower reaches of the pit might serve for air quality purposes but will yield to filling operations and that cannot be avoided. Trees along the upper slopes where filling might not occur until later in the process or are located above the estimated 325 feet should be retained until fill reaches those levels or slopes.
5. The pit obviously is in constant states of change as materials are deposited along its bottom and sides. This can create dust and noise. Watering keeps down dust and noise is contained to some extent by the depth of the work but will increase as the depth becomes less and less. As the pit becomes shallower the City should review the noise levels and potentially curtail the evening on-site operations if complaints occur.
6. The City has an agreement that allows it to channel stormwater to the pit. This agreement is obviously subject to the depth of the pit and the remaining storage capacity of the filled in pit. At some time the City will have to provide stormwater capacity or conveyance that does not rely on using the applicant's property. The pit is not designed specifically to filter or treat stormwater and the City's aquifer lies below it. The City should work to eliminate the use of this pit for stormwater control.
7. As the level of the pit reaches approximately 325 feet, the applicant will terminate work under the proposed permit and seek additional review of final reclamation plans and potentially development compatible with the comprehensive plan and the zoning. A close plan will be required.
8. The permit should be issued for the full ten years subject to the City's discretion should circumstances require earlier termination during an annual licensing process.

Steep Slope Modification

9. Section 4-3-050N.2.a.ii permits regrading of what might be protected or critical slopes created by mineral or resource extraction subject to the provisions of 4-90250D.2 which state:
 - a. Substantially implements the policy direction of the policies and objectives of the Comprehensive Plan Land Use Element and the Community Design Element and the proposed modification is the minimum adjustment necessary to implement these policies and objectives;
 - b. Will meet the objectives and safety, function, appearance, environmental protection

and maintainability intended by the Code requirements, based upon sound engineering judgment;

- c. Will not be injurious to other property(ies) in the vicinity;
- d. Conforms to the intent and purpose of the Code;
- e. Can be shown to be justified and required for the use and situation intended; and

10. Unless the pit is refilled and reclamation completed, the site cannot be used for purposes outlined in the comprehensive plan nor permitted by the zoning. The steep slopes are completely artificial and unless protected by fencing, are a danger to the public.
11. Filling the site will eliminate very steep slopes and the objective dangers such slopes create to the general public.
12. The filling that has occurred up to now has not created any untoward impacts to the nearby properties.
13. Filling, as noted above, will also enable the eventual reuse of the site for uses compatible with the neighborhood.
14. The refilling of the site serves two purposes. Not only does it move the property closer to redevelopment but permits materials from other necessary construction projects to be excavated and imported to this site.
15. In conclusion, the proposed permit and modification appear to serve the public use and interest and remain subject to review by the City if for some reason things get out of hand and the operation creates hazards or nuisances that need addressing.

DECISION:

The Special Permit for Fill and Grade and the Modification to allow alteration of the steep slopes is approved subject to the following conditions:

1. The applicant shall limit the number of trucks accessing the project site to a maximum of 210 trip ends (truck imported material to the site) per day in order to avoid adverse impacts to the flow of traffic on NE 4th Street.
2. A bond for road maintenance of Jefferson Avenue NE or Monroe Avenue NE, to cover the proportionate share of maintenance or repairs the City finds are necessary as a result of Segale Properties LLC's use of Jefferson Avenue NE or Monroe Avenue NE as a haul route for fill operations at the Upper Balch Pit, may be required in the City's sole discretion.
3. The applicant shall be responsible for establishing a wheel-washing facility for the trucks at the exit from the project site if Development Services Division, in its sole discretion, determines such a facility is necessary. Development Services, in its sole discretion, may curtail importation of materials during the construction of the facility.
4. At the time of annual grading license approval, the applicant shall provide a renewable cash bond or other instrument acceptable to the City Attorney, in the amount of \$3,000 for the purpose of street cleaning in the event the applicant fails to clean the streets of debris from the filling operations.

5. The applicant shall bring the exiting fence into good condition by, installing screening slats on the south side of the fence, repairing or replacing all broken slats, and trimming the overgrown landscaping. While the special permit is in effect, the applicant shall be responsible for the maintenance of the chain link fence and wooden slats in good condition along the site perimeter for the purpose of screening and safety.
6. All existing trees on the site shall remain until which time it is necessary to remove the trees for fill purposes, the 21 trees located above the 325 foot elevation, shall be maintained, until a reclamation plan has been submitted and been approved by the City.
7. The applicant shall ensure that all gates are locked at the end of each working day and on weekends, when the site is not in use.
8. Prior to filling the area of paved on-site roadway, the asphalt road must be removed from the site to an approved construction and demolition waste landfill. Documentation of proper disposal shall be submitted to the Development Services Division within 30 days of removal.
9. The permit shall be valid for a maximum of 10-years; six (6) months prior to the five (5) year anniversary, the applicant shall ask the City to administratively review the permit and existing circumstances. The City may administratively alter conditions as reasonably necessary to respond to new impacts associated with the fill operation or to respond to significant risks to public health, safety and welfare. Such conditions may include limiting aspects of the permit including hours of operation, days of operation, or otherwise curtail certain activities. The City shall not have any discretion or ability to relax any conditions or lengthen the hours or days of operation. If the applicant believes such further limitations are improper they may appeal the administrative decision to the Hearing Examiner or instead opt to apply for a new Special Permit.

ORDERED THIS 2nd day of November 2010.

FRED J. KAUFMAN
HEARING EXAMINER

TRANSMITTED THIS 2nd day of November 2010 to the following:

Mayor Denis Law	Dave Pargas, Fire Marshal
Jay Covington, Chief Administrative Officer	Larry Meckling, Building Official
Julia Medzegian, Council Liaison	Planning Commission
Gregg Zimmerman, PW Administrator	Transportation Division
Alex Pietsch, CED Administrator	Utilities Division
Jennifer Henning, Current Planning Manager	Neil Watts, Development Services
Stacy Tucker, Planning Division	Janet Conklin, Development Services
Marty Wine, Assistant CAO	Renton Reporter

Pursuant to Title IV, Chapter 8, Section 100G of the City's Code, **request for reconsideration must be filed in writing on or before 5:00 p.m., November 16, 2010.** Any aggrieved person feeling that the decision of the Examiner is ambiguous or based on erroneous procedure, errors of law or fact, error in judgment, or the

discovery of new evidence which could not be reasonably available at the prior hearing may make a written request for a review by the Examiner within fourteen (14) days from the date of the Examiner's decision. This request shall set forth the specific ambiguities or errors discovered by such appellant, and the Examiner may, after review of the record, take further action as he deems proper.

An appeal to the City Council is governed by Title IV, Chapter 8, Section 110, which requires that such appeal be filed with the City Clerk, accompanying a filing fee of \$250.00 and meeting other specified requirements. Copies of this ordinance are available for inspection or purchase in the Finance Department, first floor of City Hall. **An appeal must be filed in writing on or before 5:00 p.m., November 16, 2010.**

If the Examiner's Recommendation or Decision contains the requirement for Restrictive Covenants, the executed Covenants will be required prior to approval by City Council or final processing of the file. You may contact this office for information on formatting covenants.

The Appearance of Fairness Doctrine provides that no ex parte (private one-on-one) communications may occur concerning pending land use decisions. This means that parties to a land use decision may not communicate in private with any decision-maker concerning the proposal. Decision-makers in the land use process include both the Hearing Examiner and members of the City Council.

All communications concerning the proposal must be made in public. This public communication permits all interested parties to know the contents of the communication and would allow them to openly rebut the evidence. Any violation of this doctrine would result in the invalidation of the request by the Court.

The Doctrine applies not only to the initial public hearing but to all Requests for Reconsideration as well as Appeals to the City Council.